

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 28,235

In re: 4501 Connecticut Avenue, N.W.

Ward One (1)

**JAMES SCHUMAN**  
Tenant/Appellee/Appellant

v.

**SMITH PROPERTY HOLDINGS FIVE (DC) LP and ARCHSTONE-SMITH  
COMMUNITIES, LLC**  
Housing Provider/Appellant/Appellee

**ORDER ON REMAND**

**September 11, 2013**

**YOUNG, COMMISSIONER.** This case is on appeal to the Rental Housing Commission (Commission) from an Order based on a tenant petition filed with the Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations Conversion Division (RACD).<sup>1</sup> The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-2-510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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<sup>1</sup> The functions and duties of DCRA, RACD were transferred to the Department of Housing and Community Development (DHCD), Rental Accommodations Division (RAD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 1-20, 54 DCR 752 (Sept. 18, 2007) (codified at D.C. OFFICIAL CODE § 42-6502.03a (2001 Supp. 2008)).

## **I. PROCEDURAL HISTORY**

On November 22, 2004, James Schuman, the tenant (Tenant) at the housing accommodation located at 4501 Connecticut Avenue, N.W., Apartment 21 (Housing Accommodation) filed Tenant Petition (TP) 28,235 with RACD. Record (R.) for TP 28,235 at 20-31. In it, the Tenant claims that his housing providers, Smith Property Holdings Five (DC) L.P and Archstone-Smith Communities, LLC (Housing Provider) violated the Act as follows:

(1) In 2003 and 2004, a proper notice of rent increase was not provided before the rent increase became effective, inasmuch as neither Notice notified him as to the date and authorization for the most recent rent ceiling adjustment taken and perfected pursuant to 14 DCMR § 4204.9; (2) The rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act of 1985, inasmuch as it constitutes a duplicative implementation of the same rent ceiling adjustment, and/or is pursuant to an unauthorized basis; (3) Respondent has violated his rights under the Act to information pertaining to the justification for rent increases, and to be alerted of his rights, including the right to challenge rent increases, by compelling him to select from a number of renewal lease “options” within a few number of days (many fewer than 30) under penalty of an exorbitant rent increase, and prior to receiving any Notice of Rent Increase that even purports to comply with the notice and rights-alter requirements of the Act; (4) The building in which his rental unit is located, and/or the owner and/or the manager of the accommodation, is not properly registered with the DCRA; and (5) Respondent’s demonstrable bad faith warrants the trebling of damages. R. at 25-28.

On December 15, 2005, DCRA issued a Notice of Hearing to the Tenant, Housing Provider, and their respective counsel, setting a hearing for February 2, 2005. R. at 32-35. On February 2, 2005, Hearing Examiner Sandra McNair held a hearing on this matter. R. at 37.

Tenant, Housing Provider, and their respective counsel attended the hearing. Id. On September 8, 2006, Hearing Examiner Gloria Johnson<sup>2</sup> (Hearing Examiner) issued a Proposed Decision and Order, James Schuman v. Smith Property Holdings Five (DC) LP & Archstone-Smith Communities, LLC, TP 28,235 (RACD Sept. 8, 2006) (Proposed Decision and Order).<sup>3</sup>

The Housing Provider, through counsel, submitted timely exceptions and objections to the Proposed Decision and Order on September 21, 2006. R. at 124-134. The Tenant, through counsel, also submitted timely exceptions and objections to the Proposed Decision and Order on September 27, 2006. R. at 105-112. On April 11, 2007, Acting Rent Administrator Keith Anderson (Rent Administrator) issued a Final Decision and Order Granting, in Part, Tenant/Petitioner's Exceptions and Objections.<sup>4</sup> Schuman v. Smith Prop., TP 28,235 (RACD Apr. 11, 2007) R. at 139-145. On April 12, 2007, the Housing Provider submitted a Motion to Reconsider the Final Decision and Order Granting, in Part, Petitioner's Exceptions and Objections, in which Housing Provider asserts that "the Administrator apparently did not have

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<sup>2</sup> The DCAPA, at D.C. OFFICIAL CODE § 2-509(d) (2001), provides:

(d) Whenever in a contested case a majority of those who are to render [sic] the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than [sic] the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present [sic] argument to a majority of those who are to render the order or decision, who in such case, shall personally consider such portions of the official record, as provided in subsection (c) of this section, as may be designated by any party.

Proposed Decision and Order at 114.

<sup>3</sup> "Hearing Examiner Gloria Johnson did not personally hear the evidence in this matter. In accordance with §2-509(d), any party adversely affected by the Proposed Decision and Order may file exceptions and present arguments to the Rent Administrator, who shall personally consider such portions of the official record, as may be designated in the exceptions and arguments presented. R. at 114.

<sup>4</sup> The Final Decision and Order Granting, in Part, Tenant/Petitioner's Exceptions and Objections states: "To date RACD had received no opposition to Petitioner's objections or other responsive pleadings from Respondent." R. at 145. This statement makes clear that the Rent Administrator was unaware of the timely Exceptions to the Proposed Decision and Order filed by the Housing Provider on September 21, 2006.

and, thus, did not consider the Housing Provider's Exceptions to the Proposed Decision and Order." R. at 162-164. Following receipt of the Housing Provider's timely Motion for Reconsideration, the Rent Administrator issued on April 27, 2007 an Order Granting, in Part, Housing Provider/Respondent's Motion for Reconsideration. Schuman v. Smith Prop., TP 28,235 (RACD Apr. 27, 2007) (Order Granting Mot. for Recons.).<sup>5</sup> With no notice of the Order Granting, in Part, Housing Provider's Motion for Reconsideration, the Tenant filed a Motion for Reconsideration of the Final Decision and Order Granting, in Part, and Denying, in Part, Petitioner's Exceptions and Objections on April 30, 2007. R. at 162.

## **II. ISSUES ON APPEAL**

The Housing Provider, having no notice of the Order Granting, in Part, Housing Provider's Motion for Reconsideration, filed a notice of appeal (Housing Provider Notice of Appeal) for TP 28,235 in the Commission on May 2, 2007. R. at 165-167. In the Notice of Appeal, the Housing Provider stated the following:

1. The Final Decision and Order was issued in violation of the D.C. Administrative Procedures Act.
2. The Final Decision and Order was rendered without consideration of the Exceptions and Objections filed by the Housing Provider, which was required because the Acting Rent Administrator did not hear the matter.
3. The final decision is arbitrary, capricious, and not based on the record evidence as is shown in those Exceptions and Objections.

Housing Provider Notice of Appeal at 1.

The Tenant, who also had no notice of the Order Granting, in Part, Housing Provider's Motion for Reconsideration, filed a notice of appeal (Tenant Notice of Appeal) for TP 28,235 in the Commission on May 16, 2007. In it, the Tenant stated the following:

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<sup>5</sup> Neither the Housing Provider nor the Tenant had notice of the Order Granting, in Part, the Housing Provider's Motion for Reconsideration of the Final Order, issued on April 27, 2007.

1. The Decision erroneously, and arbitrarily and capriciously, rejects the claim that the Housing Provider demanded a rent increase via a letter dated August 10, 2004. It is plain from the face of the document that it is a demand for a rent increase, stating that “the month-to-month option [\$1,570 or a \$435 increase] above will apply.” This matter is addressed in detail throughout the record in this case, including in the Proposed Decision, which found that it was an unlawful demand for increased rent. Yet, the Final Decision merely states the conclusion without any rationale or discussion of the facts or law.
2. The Decision fails to grant adequate relief. It provides no consequence for what it determines was an illegal \$150/month demand for a rent increase on August 30, 2004. In addition, it also does not provide for a refund of all past rents illegally paid or demanded (including a clear roll-back of rents and a refund through present day).
3. The Decision continues an erroneous application of the statute of limitations, as more fully described in Tenant’s Objections to Proposed Decision and Order. It is improper for the Rent Administrator to dismiss the binding precedent of Grant v. Gelman Mgmt. Co., TP Nos. 27,995, 27,997, 27,998, 28,002, 28,004 (HRC Feb. 24, 2006); that it is on appeal or disparate from what lower authorities have done in the past does not alter the fact that it is binding precedent from a superior authority.

Tenant Notice of Appeal unnumbered p. 1-2.

The Commission held an appellate hearing on August 14, 2007.

### **III. PRELIMINARY ISSUES ON APPEAL**

The Commission addresses one (1) preliminary issue on appeal:

Whether the Commission has jurisdiction over TP 28,235

### **IV. DISCUSSION OF PRELIMINARY ISSUE**

#### **Whether the Commission has Jurisdiction over the cross-appeals regarding TP 28,235**

The applicable regulation, 14 DCMR § 3802.2 (2004) provides: “A notice of appeal shall be filed by the aggrieved party within ten (10) days after a *final decision* of the Rent Administrator is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed.” (emphasis added). The Rent Administrator stayed the enforcement

of the April 11, 2007 Final Decision and Order Granting, in Part, Petitioner's Exceptions and Objections by way of the April 27, 2007 Order, so that the Rent Administrator could review the Housing Provider's Exceptions and Objections to the Proposed Decision and Order filed on September 21, 2006. R. at 124-134.<sup>6</sup> In the Rent Administrator's Order Granting, in Part, Respondent's Motion for Reconsideration, the Rent Administrator stated that "RACD shall complete its review of Respondent's September 21, 2006 exceptions and objections on or before May 18, 2007," however no Final Order taking into consideration the Housing Provider's exceptions and objections has been issued. The Commission finds that both parties have a right to receive the updated Final Decision and Order, from which they may initiate appeals if necessary.

**V. CONCLUSION**

This case is remanded to the Rent Administrator so that he may issue a Final Decision and Order considering Housing Provider's exceptions and objections to the Proposed Decision and Order.

**SO ORDERED**

  
RONALD A. YOUNG, COMMISSIONER

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<sup>6</sup> See *supra* D.C. OFFICIAL CODE § 2-509(d) at n.2.

## MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

## JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission...may seek judicial review of the decision...by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

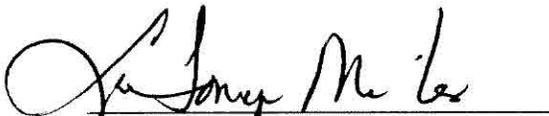
D.C. Court of Appeals  
Office of the Clerk  
Historic Courthouse  
430 E Street, N.W.  
Washington, DC 20001  
(202) 879-2700

## CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER on REMAND** in TP 28,235 was served by first-class mail, postage prepaid, this **11<sup>th</sup> day of September, 2013** to:

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